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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81 6713

BRYANT R. BRITT

Petitioner,

Vs.

SIMI VALLEY UNIFIED SCHOOL DISTRICT, John W. Duncan, George Hawkins, Robert Marcus, Allen Jacobs, Kenneth Ashton, Frederick Riess, Viola Brooks, Lewis Roth, Stephen Hogg, Sandra Binns, Helen E. Carrico, Davis McCamy,

Respondents.

PETITION FOR A WRIT OF CERTITIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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Petitioner, Bryant R. Britt, prays that this Honorable Court issue its writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered March 4, 1982 on rending a decision against the appellant which is in conflict with other circuits of the court of appeals on the same matter.

OPINIONS BELOW

Petitioner, a black tenured school teacher with ten years seniority was denied reenstatement against a school district in a discrimination case on the grounds that he failed to exhaust the administrative remedy designed by the state. The Court of Appeals for the Ninth Circuit held that the Ninth Circuit has held that, "exhaustion is required where

a teacher receives notice of dismissal for a future date and adequate administrative remedies are available to forestall the deprivation of his or her civil rights."

This case was dismissed by the District Court on March 5, 1981 on the conclusion of a Magistrate's Report and Recommendation.

JURISDICTION

The appellate jurisdiction of this Court is invoked persuant to the United States Constitution, Article III, Sections 1 and 2 with such regulations as the Congress shall make. Judgment was entered against the appellant by the Ninth Circuit Court of Appeals on March 4, 1982, and this petition is timely filed within 90 days thereafter.

QUESTIONS PRESENTED FOR REVIEW

1) Does this Courts decision in Monroe V. Pape (1961), 365 U.S. 167, 183, 81 S. Ct. 1731, 20 L. Ed. 2d 811; and Bivens V. Six Unknown Named Agents of the Federal Bureau of Narcotics, 465 F. 2d 1339, 1347 ( 2d Cir. 1972) require the exhaustion of the states administrative remedy in some circuits and not by other in a civil rights complaint?

2) If this case is remanded will it be necessary to have it decided by three judge court?

3) If state and federal funds were used in this case, will it be necessary to amend the complaint to include the state and federal government since it is not a class action, and since the federal government has been already aquitted in this matter in a separate complaint filed in the District Court on September 30, 1977,- Case number 77 3684 MMI (K). Magistrate Kronenberg has handled both cases.

## CONSTITUTIONAL PROVISIONS INVOLVED

Amendments I, III, V, VIII, and XIV of the U.S. Constitution were violated

## STATEMENT OF THE CASE

1. Appellant seeks injunctive relief and damages, alleging that the appellees conspired to violate his constitutional rights in violation of 42 U. S. Code, Sections 1981, 1983, 1985 (3), 1986, and Section 2000 (d). He also alleged violation of California,s Civil and Education Codes.

2. Plaintiff alleges that he is a black citizen who had ten years of seniority with the Simi Valley Unified School District before he was given a notice of termination predicated upon an unusual method of discharge which was not according to the legal state layoff procedure as specified by state law.

3. The appellees defaulted in their obligation to support the appellant, and they directed stressful action against him over a period of three years for the purpose of ousting the appellant from his employment because he was a black citizen.

4. The appellees violated the appellant's privacy and had him excommunicated.

5. The appellees served the appellant with a 90-day Notice to improve, and a Notice to terminate his services within 30-days if he did not file for a hearing.

6. The appellant filed for a hearing and he received notice that a hearing would be held before a Commission of Professional Competence on July 3, 1975.

7. The appellant did not feel that the hearing could be fair; therefore, he resigned at the end of the school term.

8. After the appellant resigned, the appellees would not grant him any recommendations, and they had the state to investigate his competency with the use of a systems technique and the community until the present date.

## REASONS FOR GRANTING THE WRIT

I.

The appellees employed an alternative method to deprive the appellant from his position under "Colors of state law" as follows:

California Stats. 1959, Ch. 2, P. 949, Sect 13447.

> "Where in any school year the average daily attendance in all of the schools of the district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two years , or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall become necessary by reason of such conditions to decrease the number of permanent employees in said district, the said governing board may terminate ~~of~~ not more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided, that the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified to and competent to render.
>
> ... and services of said employees shall be terminated in the inverse of the order in which they were employed, as determined by the by the board...."

II.

The accusations held against the appellant were not sufficent to terminate a permanent employee in the absence of immoral conduct, the conviction of a felony or crime involving moral terpitude. 1959 Stats. Ch-2, P. 948, Sect. 13441. The only reason that the appellant was terminated is because he was one of two black teachers who taught in that school district.

III.

There were some probationary teachers in the district and many permanent teachers in the district with less seniority. Some of the teachers with less seniority were encouraging students to give the appellant trouble. The appellant was the only black teacher at the school.

IV.

The Commission of Professional Competence was a quasi-district or completely controlled by the school district by virture of its composition. It was part of the state judicial system and not purely administrative. Once accepted, it became res judicata to present the matter in the District Court.

V.

The Court of Appeals overlooked the fact that the appellee's motion to dismiss was opposed by the appellant's motion for an injunction which was supposed to have been presented before the appellee's motion to dismiss,but the date of presentation was changed by the Magistrate. The appellant pleads excusable neglect on the account that he is not an attorney.

VII.

Under 42 U.S.C. 1983, there is no requirement of the exhaustion of the administrative remedies .

Cornist V. Richland Paris School Board, et al., (1971) 448 F. 2d 594 ( 5 th Cir. )

Damico V. California, 389 U.S. 416, 88 S. Ct. 526, 19 L. Ed. 2d 647 (1967)

VIII.

All of the cases listed by the appellees were college cases and may not be governed by the same laws that secondary schools are governed by.

CONCLUSION

For the foregoing reasons expressed herein, the petitioner respectfully request the Supreme Court of the United States to issue a writ of certiorari to review and reverse the judgment of the Court of Appeals entered herein , remand the case back to the proper court without oral arguement because of the deprivation which the petitioner has suffered in his civil rights, render a decision of whether the case is to be decided by one judge on the district level or a court of three judges, render a decision on whether it would be to any advantage for the petitioner to amend the complaint to include the State of California or the federal government.

Respectfuily submitted,

Signed: B. R. Britt
Bryant R. Britt
Attorney for petitioner,Inpropia Persona

Dated: May 10, 1982